NOV 0 1 700 39

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

§

RECEIVED

OFFICE OF PETITIONS

In re Applicant: FORTIN, F. (Petitioner)

US Serial No.: 10/760,075

PCT Serial No.: PCT/FR02/02547

Filing Date: 18 January 2004

Title: Flexible Vertebral Linking Device

Attorney Docket No. PUS-H002-001

MS: MISSING PARTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTN: Customer Service Center

Initial Patent Examination Division

PETITION TO OBTAIN A FILING DATE and REPLY TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION UNDER UNDER 37 CFR §§1.53(e)(2) & 1.181

Dear Sir:

Responsive to the Notice of Incomplete Nonprovisional Application mailed 17 September 2004 in the above referenced case, Applicant respectfully submits this Petition to Obtain a Filing Date with petition fee payment. Additionally, as an alternative response to the Notice should Applicant's Petition be refused, Applicant submits this Reply and responsive materials, including a copy of the Notice.

Certificate of Mailing Under 37CFR §1.08

I, <u>Sherman D. Pernia</u>, certify that this correspondence will be deposited with the United States Postal Service as first class mail with proper postage affixed in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on or before the date below.

Date: 27 Oct-2004 Signed: Shome Server

Remarks

Applicant has received a Notice of Incomplete Nonprovisional Application in the above

referenced case. The Notice advises that a filing date has not been accorded to the application. The

Notice states as the grounds for denying a filing date to the application is that the application was

deposited without drawings. Under 37 CFR 37 CFR §§1.53(e)(2), Applicant respectfully requests

review of this decision.

In response to the Notice, Applicant respectfully submits the enclosed Petition to Obtain a

Filing Date with petition fee payment.

Additionally, as an alternative response to the Notice should Applicant's Petition be refused,

Applicant submits this Reply including a copy Notice, the subject drawing pages at issue in the

Notice and a copy of a newly signed Declaration of the inventors (form PTO/SB/01). Applicant

believes the submitted drawing pages are true copies of the drawings originally deposited with the

Office by the International Bureau of the PCT in Applicant's international application. The

submitted drawings are not amended and add no new matter to the application.

Respectfully submitted,

Sherman D. Pernia

Registration No.: 34,404

281-335-4505

Data

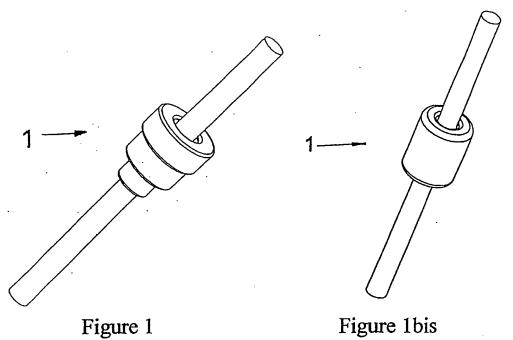


Figure 1

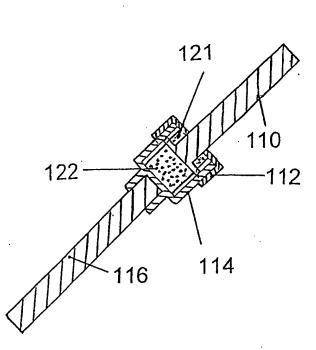


Figure 2

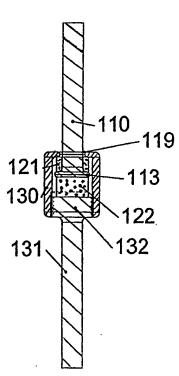


Figure 2 bis

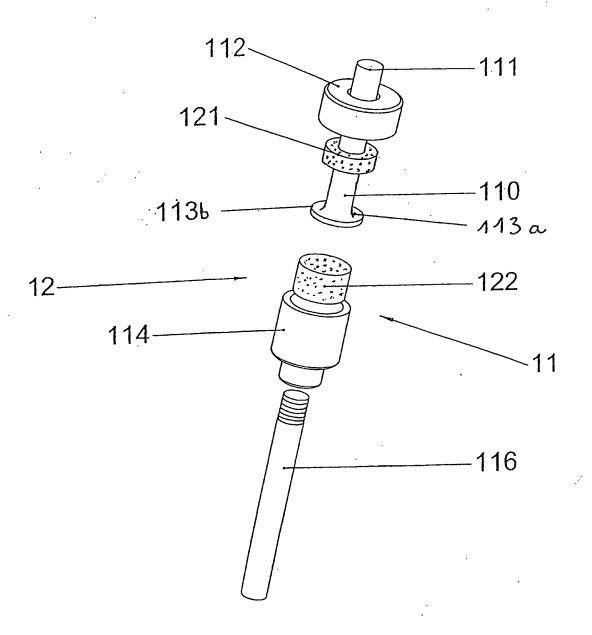


Figure 3

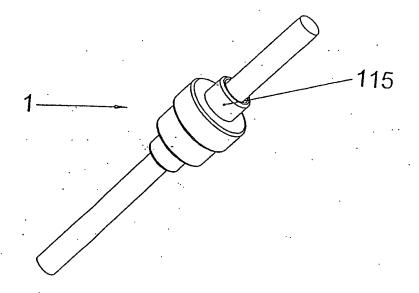


Figure 4

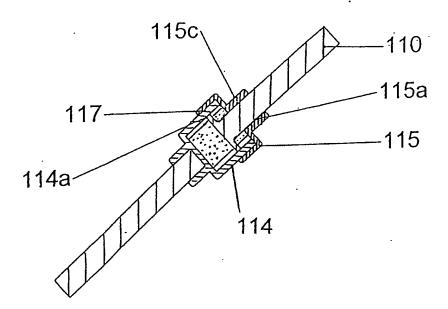


Figure 5

122

Figure 11

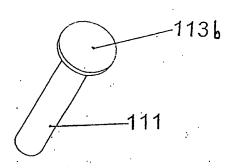


Figure 6

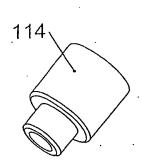


Figure 8

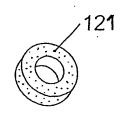


Figure 10

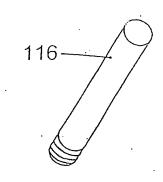


Figure 7

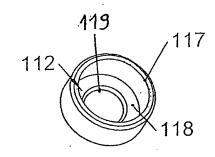


Figure 9

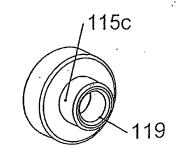


Figure 12

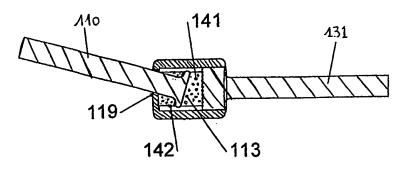


Figure 13

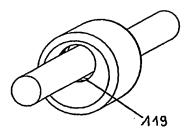


Figure 14

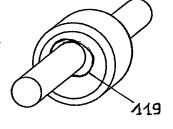


Figure 15

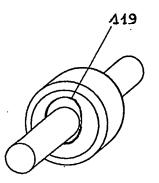


Figure 16

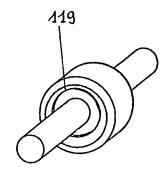


Figure 17

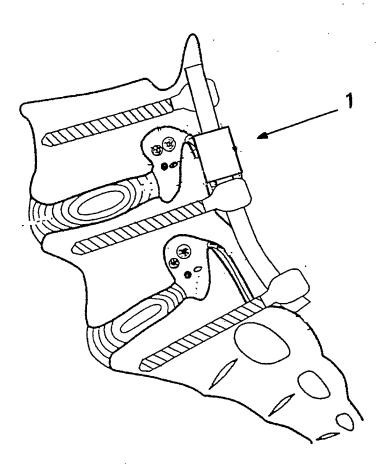


Figure 18

Page 1 of 1



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMPORCE United States Patent and Trademark Office Address Conditions (CARREST FOR PATENTS P.O. Den 1400 Alexandra Vagio 12313-1450

APPLICATION NUMBER

FILING OR 371 (e) DATE

FIRST NAMED APPLICANT

ATTORNEY DOCKET NUMBER

10/760,075

01/18/2004

Frederic Fortin

PUS-H002-001

Moetteli & Associes SaRL C.P. 486, 6 Avenue de Frontenex CH - 1211, Geneva 12, SWITZERLAND CH/24/04 H17

CONFIRMATION NO. 1916
FORMALITIES LETTER
OCCOORDO013834254

Date Mailed: 09/17/2004

NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the Items noted below and a newly executed oath or declaration covering the items must be submitted within TWO MONTHS of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)). Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petitions. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

 The application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented." Applicant should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence).

Replies should be mailed to:

Mail Stop Missing Parts

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

A copy of this notice MUST be returned with the reply.

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

DECLARATION FOR UTILITY OR

DESIGN



PUS-H002-001

Frédéric FORTIN et al.

PTC:SB/01 (10-01)

Approved for use through 10/31/2002, OMB 0551-0532

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid QMB control number.

Attorney Docket Number

First Named Inventor

PATENT APPLIC	COMPLETE IF KNOWN							
(37 CFR 1.0		Application Number	Pending: cont of P	CT/FR02/02547				
Declaration V	Declaration	Filing Date	07.	/17/2002				
Submitted OR	Submitted after tritial	An Unii	Pending					
with Initial Filing	Filing (surcharge (37 CFR 1.16 (e)) required)	Examiner Name	Pending					
As the below named inventor, I hereby declare that:								
My residence, mailing address, and citizenship are as stated below next to my name.								
I believe I am the original and first invei	ntor of the subject matter wh	rich is claimed and for whi	ch a patent is sough	t on the invention	n entided:			
FLEXIBLE VERTEBRAL	LINKING DEVICE							
PLEAIDLE VERTEBRAL	LINKING DEVICE							
	÷							
and the state of t								
	(Titie of the In	vention)						
the specification of which	•							
is attached hereto								
OR F								
was filed on (MM/DD/YYY)		as United States	Application Number	or PCT Internation	onal			
L			:					
Application Number	and was amende	id on (MM/DD/YYYY)		(if applic	abie).			
					**			
I hereby state that I have reviewed and any amendment specifically referred to	i understand the contents of above.	I the above identified spec	dification, including t	he claims, as arr	enced by			
I acknowledge the duty to disclose info applications, material information which international filing date of the continual	h became available between	patentability as defined in the filing date of the price	n 37 CFR.1.56, inclu r application and the	iding for continua e national or PC1	stion-in-part C			
I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT International application which designated at least one country other than the United States of America, fisted below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.								
Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy YES	/ Altached? NO			
FR01/09626	France	07/18/2001						
	·							
Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/028 attached hereto:								

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 21 minutes to complete. Thre will very depending upon the peeds of the individual case. Any comments on the amount of time, you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademan. Office, Washington, DC 20231. DO NOT SEND PEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

PTO/SB/01 (10-01)
Approved for use through 10/3/9/2002, OMB 0651-0032,
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

DECLARATION — Utility or Design Patent Application

Direct all correspondence to: Custom or Ber C	er Number Code Label	35 246	GR 🔲	Correspondence address belo
John Moetteli of MOETTELI & ASS	OCIES SaRL			
Name				
Address Case Postale 486, ave. de Fro	ontenex 6			
CH - 1211 Geneva 12 City				
Switzerland country	Telephone	State		ZiP
thereby declare that all statements made herein are believed to be true; and further that these s made are punishable by fine or imprisonment, or validity of the application or any patent issued the NAME OF SOLE OR FIRST INVENTOR	rech.	dge are true and ade with the kno S.C. 1001 and th	I that all statements swiedge that willful to hat such willful false	made on information and ceiler also statements and the like so statements may jeopercize the
	R: A pet	idon has beer	n filed for this un:	signed inventor
Siven Name Frédéric first and middle (if anyl)		Family or Sum		
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Pessac			FRANCE	Date 200 7
esidence: City	State		Country	FR Citizenship
ailing Address 36, allée des Passerines				Cuitensinp
Pessac		T	33600	
AME OF STREET	State	z	33000 IP	FRANCE
AME OF SECOND INVENTOR:	A petitio	n has been fil	led for this unsig	ned inventor
ven Name Johann rst and middle [if an it]		Family No	me ROBIN	otober 20th
ventors. gnature				
Bègles			RANCE	Date .
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant: FORTIN, F. (Petitioner)	§
	§
US Serial No.: 10/760,075	§
	§
PCT Serial No.: PCT/FR02/02547	§
	§
Filing Date: 18 January 2004	§
	§
Title: Flexible Vertebral Linking Device	§
	§
Attorney Docket No. PUS-H002-001	§

MS: **PETITIONS**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTN: SPECIAL PROGRAM LAW OFFICE

PETITION TO OBTAIN A FILING DATE UNDER 37 CFR §1.53(e)(2) & §1.181 and MPEP §506.02

Dear Sir:

Through his representative, now comes your Petitioner, Frederic Fortin.

On 17 September 2004, the Office mailed a Notice of Incomplete Nonprovisional Application to Petitioner. The Notice stated that a filing date had NOT been accorded the subject application. Specifically, the Office states as the ground for its refusal to grant a filing date that the application was deposited without drawings.

Petitioner respectfully asserts the application is entitled to a filing date because the subject drawings in the case were in fact on deposit with the Office, and Petitioner requests review of the refusal to grant a filing date to the application.

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR §1.8

I, <u>Sherman D. Pernia</u>, certify that this document is being deposited with the United States Postal Service as first class mail with proper postage affixed in an envelope addressed to: "COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450" on or before the date below.

27 Oct. 2004 Date

Background of the Petition

On 17 July 2002, Petitioner filed International Application for patent serial number PCT/FR02/02547 designating the US. Petitioner submits Exhibit A, a printout taken from the official World Intellectual Property Organization web site regarding the PCT filing of the subject application. Exhibit A evidences that the US was a designated state (see Item 81 of Exhibit A) of PCT/FR02/02547.

On 21 November 2002, the International Bureau mail a Notice of Receipt of the original International Application (form PCT/IB/301) to Petitioner. Exhibit B. The Notice evidences that the US was a designated state and that the present application materials, including the subject drawings, were received with application.

On 30 January 2003, Petitioner's PCT application was published by WIPO as publication number WO 03/007828, which publication included the subject drawings. See Exhibit C. Additionally, Exhibit C (cover page at item 81) clearly indicates that the US was a designated state and as such was to receive a copy of Applicant's PCT application, including the subject figures.

On 20 August 2004, Petitioner filed its Petition for Revival of an International Application for Patent Designating the US Abandoned Unintentionally, form PTO.SB/64/PCT. As of the current date, Petitioner's Rule 1.137(b) petition is still pending. Concomitant with its petition, Petitioner filed its US National Stage application for patent under 35 USC §371 using form PTO-1390.

On 17 September 2004, the Office mailed a Notice of Incomplete Nonprovisional Application to Petitioner, indicating that the application was not accorded a filing date. The Office stated that the ground for the refusal to accord a filing date was that "[t]he application was deposited without drawings." Exhibit D, see highlight.

On 25 October 2004, Petitioner timely submits the present Petition to Obtain a Filing Date.

Conclusions

- 1. The US was indicated as a designated state in Petitioner's Request filing for International Application. See Exhibit A.
- 2. As a designated state, the WIPO International Bureau communicated a copy of Petitioner's International Application, including the subject drawings, to the Office. See Exhibits B & C.
- 3. A copy of the subject drawings was on deposit with the Office upon the transmittal of Petitioner's 35 USC §371 US national stage Transmittal Letter to the Office on 18 January 2004.
- Therefore, the refusal to grant a filing date on the ground that the "application was deposited without drawings" is a mistake in the Office, and the application is entitled to a filing date.

Applicable Rules and Practice

37 C.F.R. §1.53(e)(2):

Petitioner submits that under Rule §1.53(e)(2), it is permitted for an applicant to petition for review of a notification that the original application papers lack a portion of the specification or drawings. Therefore, this petition is permitted.

37 C.F.R. §1.181(f):

Petitioner submits that Rule §1.181(f) allows a petition filed within two months of the date of the action complained of is timely filed. Therefore, the present petition under Rule §1.181(f) is timely filed.

Petition to the Special Program Law Office:

MPEP §506.02 designates that a petition to review a refusal to accord a filing date be directed to the Special Program Law Office. Therefore, Petitioner submission of the present petition to the Special Program Law Office is appropriate.

Petition Fee Refund Request:

The appropriate petition fee for a small entity under 37 CFR §1.17(i) is included with the present petition. Petitioner submits that the present petition should be granted and

requests refund of the petition fee. Petitioner requests the refund be made payable to Petitioner's undersigned representative.

Action Requested

Petitioner respectfully requests that the Office finds that the subject drawings were on deposit with the Office when Petitioner submitted his US national stage Transmittal Letter form PTO-1390.

Petitioner respectfully requests that the Commissioner review and rescind the refusal to grant a filing date.

Petitioner requests the Commission, in view of the granting of Petitioner's Petition under Rule 1.137(b), that Petitioner's 35 USC §371 national stage filing be granted a filing date at least as early as 17 January 2004.

Petitioner respectfully requests that payment of the petition fee be refunded.

25 Oxtober 2004

Respectfully submitted,

Sherman D. Pernia

For Petitioner

Reg. No. 34,404

Images Description and Claims (46 Kb)

(12) INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)

(11) WO 03/007828

(13) A1

(21) PCT/FR02/02547

(22) 17 July 2002 (17.07.2002)

(25) French

(26) French

(30) 01/09628

18 July 2001

FR

(18.07.2001)

(43) 30 January 2003 (30.01.2003)

 $(51)^7$ A61B 17/70

(54) FLEXIBLE VERTEBRAL LINKING DEVICE

(71)

(72) FORTIN, Frederic [FR/FR]; 36, allée des Passerines, F-33600 Pessac (FR).

(72) ROBIN, Johann [FR/FR]; Res Alhambra Bat B N° 18, 3, allée Aristide Colotte,

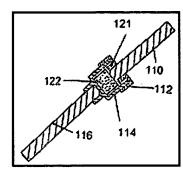
(75) F-33700 Mérignac (FR).

(81) CA, JP, US, ZA

(84) European patent (AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE, SK, TR)

Published

- -- with international search report
- -- before the expiration of the time limit for amending the claims and to be republished in the event of receipt of amendments
- (57) The invention concerns a flexible intervertebral linking device (1) consisting of two sets of means. A first set of means (11) consisting of rigid means (110, 112, 114, 116) preferably made of biocompatible metallic materials providing the device with good mechanical resistance by integral load transmission without deformation. A second set of means (12) consisting of flexible or damping means (121 and 122) made of biocompatible viscoelastic materials,



admitting repeated elastic deformations, the combination of said two sets of means providing it with both resistance and mechanical stress damping whereto it is subjected, to compensate for any deficiency of flexible anatomical links of the human body.



Français 1 of 1



TRAITE DE COOPERATION EN MATIERE DE BREVETS

PCT

NOTIFICATION DE LA RECEPTION DE L'EXEMPLAIRE ORIGINAL

(règle 24.2.a) du PCT)

Expéditeur: le BUREAU INTERNATIONAL

Destinataire:

FORTIN, Frederic 36, allée des Passerines F-33600 Pessac **FRANCE**

Date d'expédition (jour/mois/année) 21 novembre 2002 (21.11.02)	NOTIFICATION IMPORTANTE
Référence du dossier du déposant ou du mandataire	Demande internationale no PCT/FR02/02547

Il est notifié au déposant que le Bureau international à reçu l'exemplaire original de la demande internationale précisée ci-apròs.

Nom(s) du ou des déposants et de l'État ou des États pour lesquels ils sont déposants:

FORTIN, Frederic(tous les Etats désignés) ROBIN, Johann (pour US seulement)

Date du dépôt international

17 juillet 2002 (17.07.02)

Date(s) de priorité revendiquée(s)

18 juillet 2001 (18.07.01)

Date de réception de l'exemplaire original

23 septembre 2002 (23.09.02)

par le Bureau international

Liste des offices désignés

EP:AT,BE,BG,CH,CY,CZ,DE,DK,EE,ES,FI,FR,GB,GR,IE,IT,LU,MC,NL,PT,SE,SK,TR

National :CA,JP,US,ZA

ATTENTION

Le déposant doit soigneusement vérifier les indications figurant dans la précente notification. En cas de divergence entre cas indications et celles que contient la demande internationale, il doit avisor immédiatement le Bureau international.

En outre, l'attention du déposant est appelée sur les renseignements suivants donnés dans l'annexe:

délais dans lesquels doit être abordée la phase nationale - voir renseignements importants mis à jour (à compter d'avril 2002)

confirmation des désignations faites per mesure de précaution(le cas échéant)

exigences relativos aux documents de priorité (le cas échéant)

Une copie de la présente norification est envoyée à l'office récepteur et à l'administration chargée de la recharche internationale.

Bureau international de l'OMPI 34, chemin des Colombettes 1211 Genève 20, Suisse

Fonctionnaire autorisé

Sudha RAMARRISHNAN

n de télécopieur (41-22) 740.14.35

n de téléphone (41-22) 338.83.38

Formulaire PCT/IE/S01 (avril 2002)

005284803

(12) DEMANDE INTERNATIONALE PUBLIÉE EN VERTU DU TRAITÉ DE COOPÉRATION EN MATIÈRE DE BREVETS (PCT)

(19) Organisation Mondiale de la Propriété Intellectuelle

Bureau international



(43) Date de la publication internationale 30 janvier 2003 (30.01.2003)

PCT

(10) Numéro de publication internationale WO 03/007828 A1

(51) Classification internationale des brevets7: A61B 17/70

(21) Numéro de la demande internationale :

PCT/FR02/02547

(22) Date de dépôt international: 17 juillet 2002 (17.07.2002)

(25) Langue de dépôt :

français

(26) Langue de publication :

français

(30) Données relatives à la priorité : 01/09628 18 juillet 2001 (18.07.2001) FR

(71) Déposant et

(72) Inventeur: FORTIN, Frederic [FR/FR]; 36, allée des Passerines, F-33600 Pessac (FR).

(72) Inventeur; et

(75) Inventeur/Déposant (pour US seulement): ROBIN, Johann [FR/FR]; Res Alhambra Bat B N° 18, 3, allée Aristide Colotte, F-33700 Mérignac (FR).

(81) États désignés (national): CA, JP, US, ZA.

(84) États désignés (régional): brevet européen (AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE, SK, TR).

Publiée:

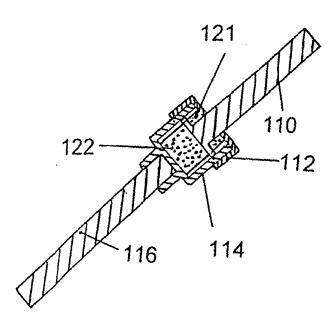
avec rapport de recherche internationale

 avant l'expiration du délai prévu pour la modification des revendications, sera republiée si des modifications sont reçues

En ce qui concerne les codes à deux lettres et autres abréviations, se référer aux "Notes explicatives relatives aux codes et abréviations" figurant au début de chaque numéro ordinaire de la Gazette du PCT.

(54) Title: FLEXIBLE VERTEBRAL LINKING DEVICE

(54) Titre: DISPOSITIF DE LIAISON VERTEBRALE SOUPLE



(57) Abstract: The invention concerns a flexible intervertebral linking device (1) consisting of two sets of means. A first set of means (11) consisting of rigid means (110, 112, 114, 116) preferably made of biocompatible metallic materials providing the device with good mechanical resistance by integral load transmission without deformation. A second set of means (12) consisting of flexible or damping means (121 and 122) made of biocompatible viscoelastic materials, admitting repeated elastic deformations, the combination of said two sets of means providing it with both resistance and mechanical stress damping whereto it is subjected, to compensate for any deficiency of flexible anatomical links of the human body.

(57) Abrégé: L'invention est un dispositif de liaison intervertébrale souple (1) constitué de deux ensembles de moyens: Un premier ensemble de moyens (11) composé de moyens rigides(110,112,114,116) fabriqués en matériau de préférence métalliques et biocompatibles assurant une bonne tenue mécanique du dispositif en

transmettant intégralement les efforts sans se déformer. Un deuxième ensemble de moyens (12) formé de moyens souples ou amortissant (121 et 122) fabriqués en matériaux viscoélastiques biocompatibles, acceptant les déformations élastiques répétées, la combinaison de ces deux ensembles de moyens permettant de résister en même temps que d'amortir les sollicitations mécaniques auquel il sera soumis, pour palier à toute déficience des liaisons souples anatomiques du corps humain.



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DISPOSITIF DE LIAISON VERTEBRALE SOUPLE

DOMAINE DE L'INVENTION

L'invention concerne un dispositif de liaison vertébrale postérieure qui travaille en traction compression et en flexion, et qui amortit toutes les sollicitations mécaniques. Ce dispositif va présenter des avantages fonctionnels qui vont être décrits.

10 **ART ANTERIEUR:**

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On connait de nombreux systèmes de fixations vertébrales postérieures rigidifiant un certain nombre de vertèbres en les privant de toute mobilité pour permettre ainsi d'encaisser toutes contraintes mécaniques. Cependant, la première vertèbre adjacente à ce bloc rigide garde toute sa mobilité et cette discontinuité brutale entre le bloc rigide et cette vertèbre libre engendre très souvent une hypersollicitation des éléments de liaison. Il s'en suit une accélération de la dégénérescence de ce niveau.

Ce problème n'a été que très partiellement résolu par des 20 systèmes semi-rigides conçus pour créer une rigidité intermédiaire entre les vertèbres mobiles et les vertèbres fixes. Ces systèmes présentent les inconvénients suivants :

-soit: ils travaillent uniquement en traction. C'est le cas de tous les dispositifs basés sur les ligaments artificiels. Ces systèmes sont peu élastiques et laissent à l'appréciation de l'opérateur le soin de régler la tension rendant ainsi aléatoire les caractéristiques mécaniques en particulier dans le mode de fonctionnement traction compression qui nous concerne.

-soit: ils travaillent en compression avec une butée en traction, 30 ce qui rend ces dispositifs inefficaces dés qu'ils doivent assister des déplacements en extension. WO 03/007828 PCT/FR02/02547

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Quoiqu'il en soit: aucun des dispositifs connus ne résout entièrement le problème posé, à savoir: amortir les sollicitations mécaniques existant en traction compression et en flexion auquelles une vertèbre mobile peut être soumise.

Nous citerons comme première antériorité : le brevet EP 0576 379 A1 qui présente un amortisseur qui semble s'approcher le plus près tout au moins du point de vue du schéma général de la présente invention ; la revendication 1 du présent brevet protège 10 "un amortisseur uniaxial travaillant uniquement en compression tout en jouant le rôle d'une butée qui s'oppose à tout déplacement du piston au delà d'une valeur déterminée......

Dans ce cas la limitation exponentielle du déplacement résolue par l'antériorité, est un problème qui n'a rien à voir avec 15 celui que veut résoudre la présente invention.

Nous citerons une deuxième antériorité : la demande de brevet N° 0012998 qui décrit et revendique "un dispositif de liaison souple et monobloc fonctionnant vertébral de multidirectionnelle"

Cette antériorité ne résout pas tout à fait le même problème 20 que celui que veut résoudre la présente invention, dont les moyens et fonctions mis en place sont différents.

Dans la présente invention on peut choisir de manière précise le mode de travail désiré: traction compression ou flexion, ou la 25 combinaison des deux modes de travail ,ceci afin d'eviter tout contact entre les facettes articulaires.

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DESCRIPTION

Nous listerons les dessins servant à comprendre l'invention.

Les figure 1 et 1 bis de la planche 1/6 présentent des vues en perspective (deux variantes de réalisation) du dispositif dans le cas d'un mode de travail combiné en traction compression et flexion

Les figure 2 et 2 bis de la planche 1/6 sont des vues en coupe longitudinales de deux variantes du même dispositif.

La figure 3 de la planche 2/6 est une vue éclatée du dispositif 10 et de ses moyens.

La figure 4 de la planche 3/6 est une vue en perspective du dispositif travaillant uniquement en traction compression.

La figure 5 de la planche 3/6 est une vue en coupe du dispositif travaillant uniquement en traction compression.

Les figures 6 à 11 de la planche 4/6 représentent l'ensemble des pièces unitaires constituant le dispositif.

La figure 12 de la planche 4/6 montre un autre moyen spécifique travaillant suivant le mode de traction compression.

La figure 13 de la planche 5/6 montre une variante du 20 dispositif travaillant suivant deux axes.

Les figures 14 à 17 de la planche 5/6 montrent quatre formes de l'extrémité mobile d'une autre variante du dispositif 1.

La figure 18 de la planche 6/6 montre le dispositif posé Le dispositif 1 est constitué de deux ensembles de moyens:

Un premier ensemble de moyens 11 composé de moyens 25 rigides fabriqués en matériau de préférence métalliques biocompatibles assurant une bonne tenue mécanique du dispositif en transmettant intégralement les efforts

Un deuxième ensemble de moyens 12 formé de moyens souples ou amortissant fabriqués en matériaux viscoélastiques bio-30 compatibles, acceptant les déformations élastiques répétées. C'est la combinaison de ces deux ensembles de moyens qui permet à l'invention de fonctionner 5

Le premier ensemble de moyens 11 comprend quatre structures mécaniques 110,112, 114, 116 qui ont pour fonction de transmettre les efforts, sans se déformer, et auquels est soumis le dispositif 1.

La structure mécanique 110 est constituée d'une tige mécanique 111 dont l'une des extrémités est surmontée d'un plateau circulaire 113b relié à ladite tige 111 avec un large rayon de raccordement 113a, l'ensemble pouvant coulisser dans la partie creuse de la structure 114 qui enferme un élément visco-éléastique 121. 10

La structure mécanique 112 est un capuchon muni d'un taraudage 117 permettant la fixation de ladite structure 112 sur la structure 114; le moyen 112 dispose d'un épaulement 118 qui permet d'enfermer entre le plateau 113b et lui-même une rondelle 15 viscoélastique 121.

La structure mécanique 114 est constituée de deux cylindres creux dont l'un est taraudé pour permettre la fixation d'une tige 116 à embout fileté

Les moyens 110 et 116 viennent se fixer sur les vertèbres 20 pour permettre le fonctionnement du dispositif 1.

Le deuxième ensemble de moyens 12 est constitué des deux moyens viscoélastiques 121 et 122.

Le premier moyen 121 est de préférence une rondelle qui laisse coulisser en son centre la tige 111

Le deuxième moyen 122 est un disque plein en matériau 25 viscoélastique. Ces deux rondelles 121 et 122 peuvent subir des efforts de compression qui peuvent être non uniformément répartis, elles ont été conçues pour résister sans se rompre à de nombreuses sollicitations cycliques de fatigue, des essais ont été effectués dans ce sens, les moyens 121 et 122 peuvent subir ces épreuves en se 30 déformant élastiquement autant de fois que nécessaire.

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Le matériau choisi est de préférence un polyuréthane bio-compatible; grâce à leur intégration à l'intérieur des moyens mécaniques 110, 112, 114,116, les moyens viscoélastiques 121 et 122 sont protégés par les précédentes structures mécaniques de l'environnement agressif du corps humain, cela évite notamment la formation de fibres autour de ces moyens qui pourraient altérer les propriétés viscoélastiques du matériau et par conséquent perturber le bon fonctionnement du dispositif 1.

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Ce dispositif 1 permet d'amortir les sollicitations en traction compression et flexion qu'il subit par l'intermédiaire des tiges 110 et 116. Cette fonction est assurée du fait que le moyen 112 possède un orifice 119 suffisamment large pour permettre un débattement de la tige 111 et qu'il existe un jeu fonctionnel entre le plateau 113 et le corps creux du moyen 114; l'épaulement 118 sert de butée et maintient dans son logement la masse viscoélastique 121 ainsi enfermée.

Dans le cas où on désire travailler en mode uniaxial de traction compression, le moyen 112 est remplacé par un autre moyen 115 20 équipé d'un filetage 117, qui comprend un capuchon 115c, dont l'orifice 119 est ajusté au diamètre de la tige 110 en se prolongeant par un guidage 115a

Ce dispositif 1 est donc capable de réagir dynamiquement aux sollicitations appliquées. Il est indispensable que la structure 25 114 comporte un alésage 114a pour permettre un guidage sans frottement excessif de la tige 110 dans ledit moyen 114.

L'ajustement du diamètre des rondelles viscoélastiques 121 et 122 doit être effectué avec précision pour leur permettre de s'écraser librement jusqu'a un seuil d'effort correspondant à un 30 point de contact de l'alésage 114a du moyen 114

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Une variante de l'ensemble des moyens 11 comprend des structures métalliques ayant les mêmes fonctions que les structures 110, 112, 114, 116, mais l'assemblage de ces trois pièces (110,130,131) étant d'un encombrement plus faible que celui des structures précédemment décrites (fig 2)

La tige 131 se fixe au capot 130 par l'intermédiaire d'un filetage situé sur l'épaulement 132 de la tige.

Dans le cas de cette variante les possibilités de déplacement de la tige 110 soumise aux sollicitations en flexion sont assurées 10 par le jeu 119 situé entre le capot 130 et la tige 110.

Pour un fonctionnement uniaxial du dispositif 1, on préférera utiliser les moyens 110,112, 114, 116 qui procurent un meilleur guidage de la tige 110. si on a besoin d'un encombrement réduit, on utilisera de préférence les moyens 110, 130, 131.

Le Dispositif 1 est capable de fonctionner avec des tiges 110 et 131 se déplaçant sur des axes concourants (fig 13) avec un petit angle de déplacement et selon des débattements déterminés.

L'ensemble des moyens 12 sont alors composés de deux moyens viscoélastiques 141 et 142. Le moyen 141 est un cylindre 20 plein de matière viscoélastique, biocompatible et dont la face en contact avec un plateau est inclinée. Le moyen 142 est une rondelle dont la face en contact avec le dos du plateau est incliné.

L'ensemble des moyens 11 (moyens rigides) sont identiques à ceux précédemment décrits, l'orifice 119 étant néanmoins ex-25 centré en fonction de l'angle choisi. La forme de l'orifice 119 est définie en fonction des débattements que l'on autorise à la tige 110.

La tige 110 peut ainsi, grâce a ces nouvelles caractéristiques techniques, travailler en traction compression avec un angle donné par rapport à la tige 116 ou la tige 131 dans le cas ou l'orifice 119 30 est désaxé et ajusté à la tige 116 ou 131 (figures 14).

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La tige 110 formant un angle par rapport à la tige 116 ou 131 (cas ou l'orifice 119 est de forme oblongue et décentré) peut dans ce cas travailler aussi bien en traction compression qu'en flexion latérale. (≠ig 15)

La tige 110 peut travailler en traction compression et en flexion selon un axe privilégié qui peut être par exemple dans le plan sagittal du rachis, et ceci de part et d'autre d'une position donnée de la tige 110 formant au repos un angle avec la tige 116 ou la tige 131, ceci, toujours de le cas ou le moyen 119 est de forme 10 oblongue et décentré. (fig 16)

Enfin la tige 110 peut travailler en traction compression et en flexion dans toutes les directions, formant un angle par rapport à la tige 116 ou 131 dans le cas où l'orifice 119 est décentré et plus large que le diamètre de la tige 110. (figure 17)

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4-Dispositif de liaison intervertébrale souple (1) selon la revendication 1 caractérisé en ce que le moyen (114) est constitué de deux cylindres creux dont l'un est taraudé pour permettre la fixation d'une tige (116) à embout fileté.

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- 5- Dispositif de liaison intervertébrale souple (1) suivant la revendication 1 caractérisé en ce que les moyens viscoélastiques sont :
- pour (121) une rondelle laissant coulisser en son centre la tige (111)

pour (122) un disque plein, ces moyens étant conçus pour subir sans se rompre un grand nombre de sollicitations de fatigue en se déformant élastiquement suivant des efforts de compression qui ne sont pas uniformément répartis.

- 6- Dispositif de liaison intervertébrale souple (1) suivant l'une quelconque des précédentes revendications 1 ou 5 caractérisé en ce que les moyens viscoélastiques (121 et 122) sont intégrés ou 20 enfermés à l'intérieur des structures mécaniques (110,112, 114,115,116) ainsi protégés de l'environnement du corps humain, ce qui évite la formation de fibres pouvant perturber le fonctionnement du dispositif (1)
- 7- Dispositif de liaison intervertébrale souple (1) suivant l'une quelconque des précédentes revendications 1, 3 ou 6 caractérisé en ce que le moyen (112) est une structure mécanique qui possède un orifice (119) suffisamment large pour permettre un débattement de la tige (11) et qu'il existe un jeu fonctionnel entre le plateau (113) et le corps creux du moyen (114), lesdits moyens permettant ainsi au dispositif (1) de travailler en traction compression et flexion.

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- 8-Dispositif de liaison intervertébrale souple (1) selon l'une des revendications 1 à 6 caractérisé en ce que le moyen (115) est équipé d'un filetage (117) et comprend un capuchon (115c) dont l'orifice (119) est ajusté au diamètre de la tige (110), en se prolongeant par un guidage (115a), ce qui permet au dispositif (1) de travailler en mode de compression seul.
- 9- Dispositif de liaison intervertébrale souple (1) selon l'une 10 quelconque des précédentes revendications caractérisé en ce que le moyen (114) comporte un alésage (114a) permettant un guidage sans frottement excessif de la tige (110) dans ledit moyen (114)
- 10- Dispositif de liaison intervertébrale souple (1) selon l'une quelconque des précédentes revendications caractérisé en ce que le diamètre des rondelles viscoélastiques (121 et 122) est ajusté librement pour leur permettre de se comprimer jusqu'a un seuil d'effort correspondant au contact avec l'alésage (114a) du moyen (114)
- 11- Dispositif de liaison intervertébrale souple (1) selon l'une quelconque des précédentes revendications caractérisé en ce que les moyens viscoélastiques (141 et 142) sont respectivement un cylindre et une rondelle possédant une face inclinée, permettant ainsi gràce à la combinaison de l'ensemble des moyens (12) avec l'orifice (119) désaxé, d'obtenir des débattements et un amortissement de la tige 110 selon un axe formant un angle avec la tige (131).
- 12- Dispositif de liaison intervertébrale souple (1) selon l'une quelconque des précédentes revendications caractérisé en ce que 30 l'orifice (119) de l'ensemble des moyens rigides (11) permet de limiter ou d'empécher les débattements de la tige (110), faisant ainsi travailler le dispositif 1, selon les directions voulues.

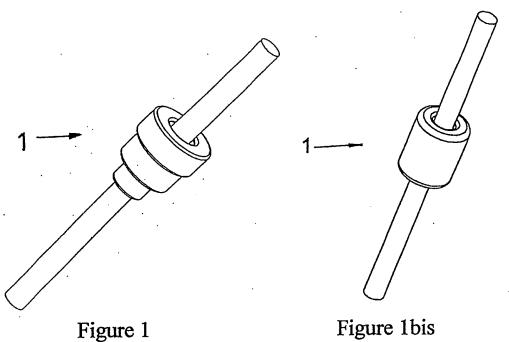


Figure 1

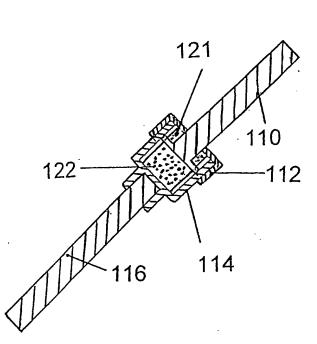


Figure 2

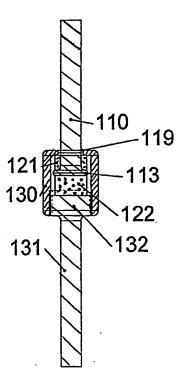


Figure 2 bis

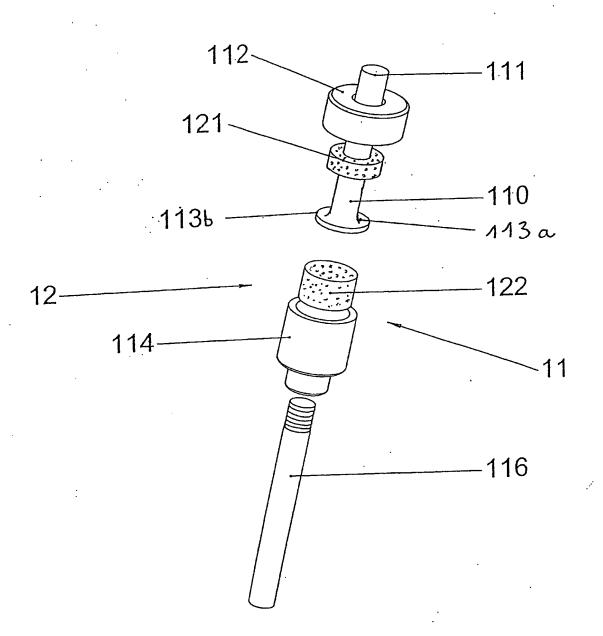


Figure 3

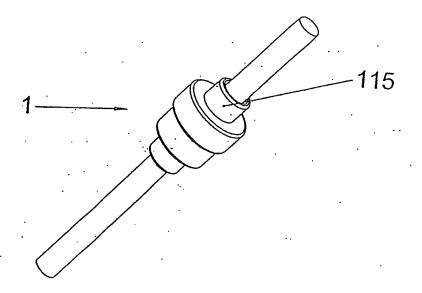


Figure 4

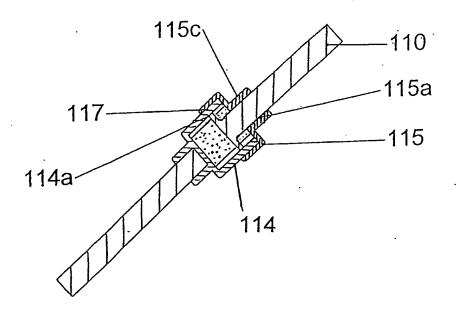


Figure 5

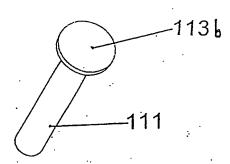


Figure 6

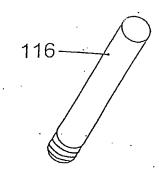


Figure 7

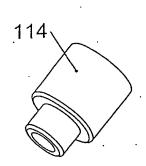


Figure 8

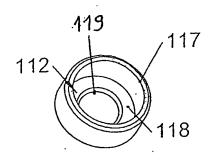


Figure 9

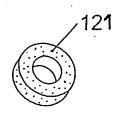


Figure 11

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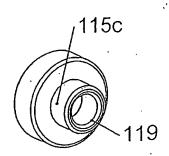


Figure 12

Figure 10

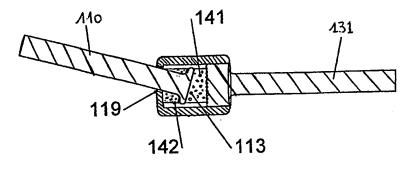


Figure 13

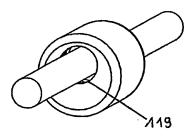


Figure 14

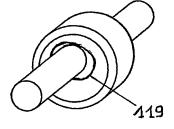


Figure 15

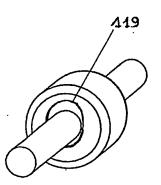


Figure 16

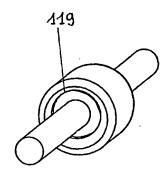


Figure 17

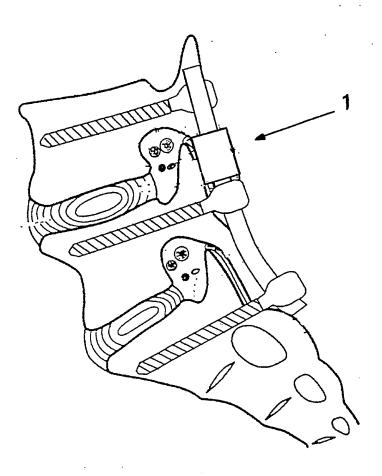


Figure 18

INTERNATIONAL SEARCH REPORT



A. CLASSIFICATION OF SUBJECT MATTER IPC 7 A61B17/70

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

 $\begin{array}{ll} \mbox{Minimum documentation searched (classification system followed by classification symbols)} \\ \mbox{IPC 7} & \mbox{A61B} \end{array}$

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

EPO-Internal, WPI Data

Category ° X	FR 2 774 581 A (DIMSO ET J.F.ELBERG) 13 August 1999 (1999–08–13)	Relevant to claim No.
	13 August 1999 (1999-08-13)	1
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	page 4, line 10 -page 5, line 23	2-6, 8-10,12
	figure 2	
Y	EP 0 576 379 A (PSI) 29 December 1993 (1993-12-29) cited in the application column 2, line 23 - line 43 column 2, line 54 -column 3, line 15 column 3, line 45 - line 55 figures 1,2,4	2-6, 8-10,12
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	-/	

X Further documents are listed in the continuation of box C.	Y Patent family members are listed in annex.
"A" document defining the general state of the art which is not considered to be of particular relevance "E" earlier document but published on or after the international filling date "L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified) "O" document referring to an oral disclosure, use, exhibition or other means "P" document published prior to the international filling date but later than the priority date claimed	"T" later document published after the International filing date or priority date and not in conflict with the application but clied to understand the principle or theory underlying the invention "X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone "Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art. "&" document member of the same patent family
Date of the actual completion of the international search 18 November 2002	Date of mailing of the international search report 25/11/2002
Name and mailing address of the ISA European Patent Office, P.B. 5818 Patentlaan 2 NL – 2280 HV Rijswijk Tel. (+31–70) 340–2040, Tx. 31 651 epo nl, Fax: (+31–70) 340–3016	Authorized officer Nice, P

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INTERNATIONAL SEARCH REPORT

Intermonal Application No
PCT/FR 02/02547

	tion) DOCUMENTS CONSIDERED TO BE RELEVANT	Relevant to claim No.
category °	Citation of document, with indication, where appropriate, of the relevant passages	Helevant to daim No.
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*Triformation on patent family members

Intermental Application No
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Page 1 of 1



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UNITED STATES DEPARTMENT OF COMMERCE United finates Patent and Trademark Office AdvanceOMMERIONER FOR PATENTS FO. Der 1450 2311-1450

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FIRST NAMED APPLICANT

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PUS-H002-001

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CONFIRMATION NO. 1916

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Date Mailed: 09/17/2004

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NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

NOV 1 0 2004

FILED UNDER 37 CFR 1.53(b)

OFFICE OF PLATIONS

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the Items noted below and a newly executed oath or declaration covering the items must be submitted within TWO MONTHS of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)). Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The application was deposited without drawings: 35 U.S.C. 113 (first sentence) requires a drawing "where
necessary for the understanding of the subject matter sought to be patented." Applicant should reconsider
whether the drawings are necessary under 35 U.S.C. 113 (first sentence).

Replies should be mailed to:

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Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

A copy of this notice MUST be returned with the reply.

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Application Number 10/760,075

Filing Date

First Named Inventor FORTIN, F.

Art Unit NOV 1 5 2004

(to be used for all correspondence after initial filing)

Attorney Docket Number PUS-H002-001

Total Number	of Pages in This Submission		PUS-HUUZ-UUT		
		ENCLOSURES (Check all	that apply)		
Fee Tra	ansmittal Form	Drawing(s) Licensing-related Papers		Appea	Illowance Communication to TC I Communication to Board eals and Interferences
Extens Expres Informa Certifie Docum Reply t	ment/Reply After Final Affidavits/declaration(s) ion of Time Request s Abandonment Request ation Disclosure Statement d Copy of Priority	Petition Petition to Convert to a Provisional Application Power of Attorney, Revocation Change of Correspondence A Terminal Disclaimer Request for Refund CD, Number of CD(s) Landscape Table on CD Remarks - This paper is: a PETITION TO OBTAINCOMPLETE NONPROVISIONAL A	- Re - Ch	Appea (Appea Proprio Status Other below eturn pos neck	I Communication to TC I Notice, Brief, Reply Brief) etary Information Letter Enclosure(s) (please Identify : tcard & Rule 8 Cert.
	SIGNA	TURE OF APPLICANT, ATTO	RNEY OR AC	FNT	
	SIGNA	TORE OF AFFEIGANT, ATTO	THE I, ON AC		
Firm Name	Sherman D. Pernia				
Signature	Spren	Dem			
Printed name	Sherman D. Pernia				
Date	26 October 2004	F	Reg. No. 34,40	4	W-107
	C	ERTIFICATE OF TRANSMISS	ON/MAILING		
I hereby certify sufficient posta the date shown	ige as first class mail in an er	being facsimile transmitted to the USPTo evelope addressed to: Commissioner for	O or deposited wing Patents, P.O. Bo	th the Un x 1450, A	ited States Postal Service with Alexandria, VA 22313-1450 on
Signature	Sham	Dem			
Typed or printe	ed name Sherman D. Per	nia		Date	27 October 2004

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Date: 27 October 2004

Signed: X

Docket No. <u>PUS-H002-001</u> Serial No. <u>10/760,075</u>

PTO/SB/17 (10-03)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE the Paperwork Reduction Act of 1995, no persons are required to r

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

✓ Applicant claims small entity status. See 37 CFR 1.27

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Ca	omplete if Known
Application Number	10/760,075
Filing Date	
First Named Inventor	FORTIN, F. RECEIVED
Examiner Name	NOV 1 5 2004
Art Unit	NOA T 9 VIII
Attorney Docket No.	PUS-H002-001

METHOD OF PAYMENT (check all that apply)	FEE CALCULATION (continued)				
Check Credit card Money Other None 3. ADDITIONAL FEES					
Deposit Account:		Small Entity			
Deposit	Fee Fee Code (\$)	Fee Fee Fee Description Fee Paid Fee Paid	4		
Account Number	1051 130	2051 65 Surcharge - late filing fee or oath	↰		
Deposit Account	1052 50	2052 25 Surcharge - late provisional filing fee or	٦		
Name	1053 130	cover sheet 1053 130 Non-English specification	7		
The Director is authorized to: (check all that apply)	1812 2.520	1812 2,520 For filing a request for <i>ex parte</i> reexamination	٦		
Charge fee(s) indicated below Credit any overpayments	1804 920	1804 920* Requesting publication of SIR prior to	٦		
Charge any additional fee(s) or any underpayment of fee(s)		Examiner action	┥		
Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.	1805 1,840	1805 1,840* Requesting publication of SIR after Examiner action	4		
FEE CALCULATION	1251 110	2251 55 Extension for reply within first month	4		
1. BASIC FILING FEE	1252 420	2252 210 Extension for reply within second month	┥		
Large Entity Small Entity	1253 950	2253 475 Extension for reply within third month	4		
Fee Fee Fee Fee Pee Paid Code (\$) Code (\$)	1254 1,480	2254 740 Extension for reply within fourth month	4		
1001 770 2001 385 Utility filing fee	1255 2,010	2255 1,005 Extension for reply within fifth month	4		
1002 340 2002 170 Design filing fee	1401 330	2401 165 Notice of Appeal	4		
1003 530 2003 265 Plant filing fee	1402 330	2402 165 Filing a brief in support of an appeal	4		
1004 770 2004 385 Reissue filing fee	1403 290	2403 145 Request for oral hearing	4		
1005 160 2005 80 Provisional filing fee	1451 1,510	1451 1,510 Petition to institute a public use proceeding	4		
SUBTOTAL (1) (\$)	1452 110	2452 55 Petition to revive - unavoidable	4		
2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE	1453 1,330	2453 665 Petition to revive - unintentional	4		
Fee from	1501 1,330	2501 665 Utility issue fee (or reissue)	4		
Total Claims	1502 480	2502 240 Design issue fee	4		
Independent - 3** = X =	1503 640 1460 130	2503 320 Plant issue fee 1460 130 Petitions to the Commissioner 130.00	\dashv		
Multiple Dependent	1807 50	1460 130 Petitions to the Commissioner 130.00 1807 50 Processing fee under 37 CFR 1.17(a)	\dashv		
Large Entity Small Entity	1806 180	1806 180 Submission of Information Disclosure Stmt	1		
Fee Fee Fee Fee <u>Fee Description</u> Code (\$)	8021 40	8021 40 Recording each patent assignment per property (times number of properties)	٦		
1202 18 2202 9 Claims in excess of 20	1809 770	2809 385 Filing a submission after final rejection	┨		
1201 86 2201 43 Independent claims in excess of 3		(37 CFR 1.129(a))	┙		
1203 290 2203 145 Multiple dependent claim, if not paid	1810 770	2810 385 For each additional invention to be examined (37 CFR 1.129(b))			
1204 86 2204 43 ** Reissue independent claims over original patent	1801 770	2801 385 Request for Continued Examination (RCE)	٦		
1205 18 2205 9 ** Reissue claims in excess of 20 and over original patent	1802 900	1802 900 Request for expedited examination of a design application	1		
SUBTOTAL (2)	Other fee (sp	<u> </u>			
SUBTOTAL (2) (\$) **or number previously paid, if greater; For Reissues, see above	*Reduced by	Basic Filing Fee Paid SUBTOTAL (3) (\$) 130.00	Ī		
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SUBMITTED BY					(Complete (if applicable))	
Name (Print/Type)	Sherman D. Pernia	Ω	Registration No. (Attorney/Agent)	34,404	Telephone	281-335-4505
Signature	Akarman	Dermis			Date	260ch.2004

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